

(b) (6)

CTR OPNAV

From: (b) (6) LTC USARMY HQDA OCLL (US) <(b) (6).mil>
Sent: Wednesday, May 16, 2018 8:49 AM
To: (b) (6) LCDR OLA, LA-64; (b) (6) Maj USAF SAF-LL (US); (b) (6)
LtCol USMC OSD PA (US)
Subject: RE: DOD Briefing to Sen Murray's Staff Week of 14 May on Juvenile Misconduct on
Military Installations
Signed By: (b) (6).mil

Team,

Good morning! First, DoD is sending a FAP rep so we cut ours loose and I recommend you do the same.

Second, we never met with Sen. Murray about this topic. However, I did attend the SASC PSM brief with the DoDEA folks - we brought our jurisdiction SME Charles Lozano and he briefed Army installations and jurisdictions. That EXSUM is below:

-----EXSUM-----

20 Mar 18 // 1300-1415. Ms. Virginia Penrod, Chief of Staff, Office of the Under Secretary of Defense (P&R), Mr. Jay Burcham, Chief of Staff, DoDEA, Mr. Mike Early, Office of Investigations and Internal Review, DoDEA, Dr. Elizabeth Van Winkle, Assistant Secretary of Defense for Readiness, Ms. Mary Capise, Chief, DoD Family Advocacy Program, and Mr. Charles Lozano, OTJAG, CLD, met with SASC PSMs Dr. Al Edwards, Mr. Gary Leeling, Mr. Sean O'Keefe, Mr. Jon Clark, and Ms. Katie Magnus, to discuss the recent AP article regarding allegations of juvenile on juvenile (J/J) sexual misconduct at DoDEA schools.

Mr. Lozano started the discussion by describing the types of jurisdiction on Army installations worldwide. He noted each installation had a slightly different practice because of the different states, counties, and United States Attorney Offices (USAOs) involved. The practices ranged from retrocession agreements to MOUs/MOAs to informal agreements with the USAO and/or county prosecutors. MR. Leeling asked if the installations were following DoD policy which was to encourage DoD to cede jurisdiction when installations have Federal Exclusive Jurisdiction (FEJ); specifically, "were the installations making efforts to cede jurisdiction?" Mr. Leeling asked for a copy of the DoD policy regarding this matter.

Mr. Leeling asked if there was anything preventing a Judge Advocate from being assigned to the USAO to prosecute J/J criminal cases. Mr. Lozano noted 18 USC 5032, which requires US Attorney General (AG) certification for all cases involving children. He described the test for a federal proceeding to commence against a person under 18: 1) Juvenile court or the state does not have jurisdiction or refuses jurisdiction; and 2) the state does not have available programs and services adequate for the needs of juveniles; or 3) the offense charged is a crime of violence or certain drug offenses. Mr. Lozano cited case law that indicated the AG may have delegated that authority to certify, but he did not find authority on that point. Mr. Leeling asked if this was a DoJ certification, not DoD, and Mr. Lozano confirmed.

Mr. Leeling then asked what happened overseas, and Mr. Lozano discussed Germany as an example, citing Army in Europe Regulation (AER) 27-9, which states the host nation (HN) has jurisdiction over criminal offenses for children between 14 and 20. Mr. Lozano noted that Germany does not consider a child under the age of 14 to be able to form criminal intent; thus, they would never charge a young child with a criminal offense because no such offense exists. Mr. Lozano noted how the Army can ask that Germany waive jurisdiction, to which the HN usually agrees when the offenses are between two non-HN individuals. Mr. Leeling stated the HN was never interested in prosecuting crimes that did not involve Germans, but Mr. Lozano noted that the Germans do prosecute 14-20 year old children of Soldiers, even when the offense are against other children of Soldiers. Mr. Lozano also noted that the Military Extraterritorial Jurisdiction Act

(MEJA) does apply to family members, providing another option for prosecution should a case warrant so and should the HN decline to do so. He noted that in his discussion with 27 separate installations, to include overseas locations, the local authorities decline to prosecute a case for the same reason that all prosecutors would decline to prosecute a case: lack of evidence, resources, witness availability, and victim desires.

Mr. Leeling then turned the discussion to DoDEA. He asked Mr. Burcham about how they track cases. Mr. Burcham discussed SIR versus DCIR, which is more administrative. HE discussed the counselling and services available at the schools. Gary asked how the staff and faculty know what services are available and Mr. Burcham described the training they go through. Mr. Capise discussed the role of FAP and how the Child Abuse Prevention and Treatment Act (CAPTA) indicates when they become involved. Dr. Edwards asked about data collections, Mr. Burcham noted how DoDEA did not previously keep records from year to year, but they started maintaining records as of 1 January 2018. Dr. Edwards asked about the records transferring to civilian public schools, and Mr. Burcham stated they were bound by the Privacy Act whereas public schools are more free to share information via the Family Educational Rights and Privacy Act (FERPA).

Mr. Leeling posed some vignettes and asked whether they would require reporting to the local Child Protective Services. Ms. Penrod noted that it children under the age of 12 (pre-pubescent) should not be called sex offenders. Mr. Edwards asked how long it would take DoDEA to reform their reporting system, and stated he was not pleased with a "working group" that could take months to make recommendations. He stated, "Don't sit on this forever." He told Mr. Burcham he should not be afraid to fire principals, to which Mr. Burcham agreed and stated he fires principals all the time.

Ms. Magnus asked about suspensions and expulsions and the threshold for those actions. Mr. O'Keefe asked about Individual Educational Plans and whether they transfer between all schools (DoDEA and public). Mr. Leeling asked for the communications plan, the parent-teacher outreach materials, and the sexual harassment policy. He stated every year they have an issue that really takes hold, and this could be that issue.

DUE OUTS: 1) Copy of DoD policy regarding ceding jurisdiction, and 2) DoDEA products.

-----Original Message-----

From: (b) (6) LCDR OLA, LA-64 (b) (6) .mil>

Sent: Wednesday, May 16, 2018 7:46 AM

To: (b) (6) LTC USARMY HQDA OCLL (US) <(b) (6) .mil>; (b) (6) Maj USAF SAF-LL (US) <(b) (6) .mil>; (b) (6) LtCol USMC OSD PA (US) <(b) (6) .mil>

Cc: (b) (6) LCDR USN (US) (b) (6) .mil>

Subject: RE: DOD Briefing to Sen Murray's Staff Week of 14 May on Juvenile Misconduct on Military Installations

(b) (6) - would you mind sharing the EXSUM from your previous engagement with Sen. Murray? Appreciate any background you can share as I am starting to prep my briefer(s) (judge advocate & NCIS, and a FAP rep if needed).

For coordination purposes, what briefer(s) are you all planning to bring? Do you have names for the judge advocate SMEs that I can share with my criminal law rep? (b) (6) I have your JA rep - thanks!

Thanks!

Vr/

(b) (6)

-----Original Message-----

From: (b) (6) LCDR OLA, LA-64

Sent: Tuesday, May 15, 2018 11:07 AM

To: (b) (6) LTC USARMY HQDA OCLL (US) <(b) (6) .mil>; (b) (6) Maj USAF SAF-LL (US) (b) (6) .mil>; (b) (6) LtCol USMC OSD PA (US) <(b) (6) .mil>
Cc: (b) (6) LCDR OLA, LA-64 (b) (6) .mil>
Subject: RE: DOD Briefing to Sen Murray's Staff Week of 14 May on Juvenile Misconduct on Military Installations

Team,

FYSA: <https://www.military.com/daily-news/2018/05/14/mattis-pledges-action-sex-assaults-among-children-teens-bases.html>

Vr/

(b) (6)

-----Original Message-----

From: (b) (6) Lt Col USAF SAF-LL (US) [mailto:(b) (6) .mil]
Sent: Monday, May 14, 2018 8:50 PM
To: (b) (6) LCDR OLA, LA-64 (b) (6) .mil>; (b) (6) LTC USARMY HQDA OCLL (US) (b) (6) .mil>; (b) (6) Maj USAF SAF-LL (US) <(b) (6) .mil>
Cc: (b) (6) LtCol USMC OSD PA (US) <(b) (6) .mil>
Subject: RE: DOD Briefing to Sen Murray's Staff Week of 14 May on Juvenile Misconduct on Military Installations

(b) (6)

I am so lost (TDY and PCSing) - please include (b) (6) on these emails - he has already taken over for me.

v/r

(b) (6)

Lt Col (b) (6)
Legislative Counsel
Air Force Legislative Liaison
Pentagon Room (b) (6)
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-----Original Message-----

From: (b) (6) LCDR OLA, LA-64 [mailto:(b) (6) .mil]
Sent: Monday, May 14, 2018 5:22 PM
To: (b) (6) LTC USARMY HQDA OCLL (US) <(b) (6) .mil>
Cc: (b) (6) LtCol USMC OSD PA (US) (b) (6) .mil>; (b) (6) Lt Col USAF SAF-LL (US) <(b) (6) .mil>
Subject: RE: DOD Briefing to Sen Murray's Staff Week of 14 May on Juvenile Misconduct on Military Installations

Thanks! I was also thinking an NCIS SME would be helpful.

Vr/

(b) (6)

From: (b) (6) LTC USARMY HQDA OCLL (US)
Sent: Monday, May 14, 2018 5:11:28 PM
To: (b) (6) LCDR OLA, LA-64
Cc: (b) (6) LtCol USMC OSD PA (US); (b) (6) Lt Col USAF SAF-LL (US)
Subject: Re: DOD Briefing to Sen Murray's Staff Week of 14 May on Juvenile Misconduct on Military Installations

I think we will send (b) (6) from CID, Charles Lozano from OTJAG, and probably someone from Army FAP if there is room.

I haven't coordinated with Charles yet, though.

V/r

(b) (6)
Legislative Counsel
Office of the Chief, Legislative Liaison US Army Pentagon, (b) (6)
(O) 703-697-0275
(C) (b) (6)

> On May 14, 2018, at 4:31 PM, Senay, Lisa M LCDR OLA, LA-64 (b) (6).mil> wrote:

>
> Hello, Dream Team!
>
> Would you mind sharing the names of your judge advocate briefers for the Sen. Murray engagement? This will be CAPT Monahan's first engagement so I was hoping he may be able to coordinate with his counterparts ahead of the prep session/engagement. Thanks!

>
> Vr/
> (b) (6)
>
> LCDR (b) (6) JAGC, USN
> Legislative Counsel
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> 1300 Navy Pentagon, Room (b) (6)
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> -----Original Message-----
> From: (b) (6) LCDR OLA, LA-64
> Sent: Monday, May 14, 2018 4:21 PM
> To: (b) (6) Jr CIV OSD OGC (US)

> <(b) (6) mil>; Anderson, Olga M COL USARMY HQDA OCLL
> (US) <(b) (6) l.mil>; (b) (6) LtCol USMC
> OSD PA (US) <(b) (6) mil>; (b) (6) Lt Col
> USAF SAF-LL (US) <(b) (6) .mil>; (b) (6) LTC
> USARMY HQDA OCLL (US) <(b) (6) .mil>; Waldron, David A
> COL USARMY OSD OUSD C (US) (b) (6) .mil>; Milam,
> Megan A SES OSD OUSD C (US) <(b) (6) mil>
> Cc: Sullivan, Dwight H SES OSD OGC (US)
> (b) (6) .mil>; (b) (6) CIV OSD OGC (US)
> <(b) (6) .mil>; (b) (6) Maj USAF OSD OGC (US)
> (b) (6) .mil>; (b) (6) CIV OSD OASD LA (US)
> (b) (6) .mil>; (b) (6) CIV OSD OUSD P-R (US)
> (b) (6) .mil>; Richards, Edward I SES OSD OGC (US)
> (b) (6) l.mil>; McAleer, Laura P SES OSD OASD LA
> (US) (b) (6) .mil>; (b) (6) LCDR OLA, LA-64
> (b) (6) .mil>; (b) (6) CDR OLA, LA-63
> <(b) (6) .mil>
> Subject: RE: DOD Briefing to Sen Murray's Staff Week of 14 May on
> Juvenile Misconduct on Military Installations
>
> Mr. (b) (6)
>
> The Navy Judge Advocate SME briefer will be CAPT Rob Monahan (OJAG Code 20, Criminal Law). He just relieved CAPT Art Record.
>
> Standing by for date/time of the prep session and briefing, and any additional details on scope or expectations that you or COL Waldron may be able to pass. Thanks!
>
> Vr/
> (b) (6)
>
> LCDR (b) (6), JAGC, USN
> Legislative Counsel
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> "FOR OFFICIAL USE ONLY - PRIVACY SENSITIVE. ANY MISUSE OR UNAUTHORIZED DISCLOSURE MAY RESULT IN BOTH CIVIL AND CRIMINAL PENALTIES."
>
> -----Original Message-----
> From: (b) (6) Jr CIV OSD OGC (US)
> [mailto:(b) (6) @mail.mil]
> Sent: Friday, May 11, 2018 12:56 PM
> To: Anderson, Olga M COL USARMY HQDA OCLL (US)
> <(b) (6) .mil>; (b) (6) LtCol USMC OSD PA
> (US) (b) (6) .mil>; (b) (6) LCDR OLA, LA-64
> <(b) (6) mil>; (b) (6) Lt Col USAF SAF-LL (US)

> <(b) (6) [REDACTED] mil>; (b) (6) [REDACTED] LTC USARMY HQDA OCLL
> (US) (b) (6) [REDACTED] l.mil>; Waldron, David A COL USARMY OSD
> OUSD C (US) <(b) (6) [REDACTED] .mil>; Milam, Megan A SES OSD
> OUSD C (US) <(b) (6) [REDACTED] .mil>; (b) (6) [REDACTED] CDR OLA, LA-63
> (b) (6) [REDACTED] .mil>
> Cc: Sullivan, Dwight H SES OSD OGC (US)
> (b) (6) [REDACTED] .mil>; (b) (6) [REDACTED] CIV OSD OGC (US)
> (b) (6) [REDACTED] .mil>; (b) (6) [REDACTED] Maj USAF OSD OGC (US)
> (b) (6) [REDACTED] .mil>; (b) (6) [REDACTED] CIV OSD OASD LA (US)
> (b) (6) [REDACTED] .mil>; (b) (6) [REDACTED] CIV OSD OUSD P-R (US)
> (b) (6) [REDACTED] mil>; Richards, Edward I SES OSD OGC (US)
> (b) (6) [REDACTED] .mil>; McAleer, Laura P SES OSD OASD LA
> (US) (b) (6) [REDACTED] l.mil>
> Subject: DOD Briefing to Sen Murray's Staff Week of 14 May on Juvenile
> Misconduct on Military Installations
>
>
> (b) (6) [REDACTED],
>
> 1. Wanted to ensure you were tracking a briefing request to Sen Murray staff on issues wrt juvenile justice as a result in the Senator's inquiries in a letter and questions from her to SECDEF in this week's SAC-D Hearing.
>
> 2. My understanding is that DoD OGC will be sending representatives and service reps to meet next week with Congressional staffers from Sen Murray's office on the matter of juvenile justice. My understanding is this Hill engagement will be in place of a formal letter response back to Sen Murray.
>
> 3. Requesting if your respective TJAG offices could send a representative to accompany reps from the DoD Office of General Counsel (believe DOD GC reps would be Dwight Sullivan and (b) (6) [REDACTED] and reps from the Office of the Under Secretary of Defense for Personnel and Readiness. Briefing will again be to Senator Patty Murray's staff on same matters relating to juvenile misconduct on military installations.
>
> 4. The date and time of the meeting has not yet been set, but Colonel Dave Waldron in BAA is working the details.
>
> 5. Major (b) (6) [REDACTED] in OGC put out more information below on topic:
>
> The Department has recently received many inquiries from members of Congress relating to matters of juvenile misconduct on military installations, prompted in part by Associated Press articles (e.g., <https://www.military.com/daily-news/2018/03/13/us-military-overlooks-sex-abuse-among-kids-investigation-finds.html>) describing perceived problems with the Department's response to incidents of juvenile misconduct. These inquiries have included specific questions related to the DoD's role in prosecuting juveniles. Attached is a question from Representative John Carter characteristic of those the Department has received, and the Department's coordinated response. As this document reveals, the concerns of Representative Carter, shared by other members of Congress, lie in wanting to understand who prosecutes juveniles for misconduct committed on military installations, how that prosecution is accomplished, and barriers that exist to ensuring that juveniles are appropriately held accountable for their actions, particularly for the commission of serious offenses such as sexual assault. In an effort to better understand these and related issues, some members of Congress have requested briefings by Department staff. In a similar vein, Congress has also asked for views on proposed legislation that would require the Military Services to enter into MOUs with State and local officials at the installation level concerning the prosecution of such offenses.
>
> 6. Reps from the DOD OGC and the respective Service Judge Advocates are needed at this briefing, alongside P&R reps given the roles Staff Judge Advocates play a key role at the installation level in interacting with civilian Federal, State, and local officials to coordinate appropriate judicial outcomes for juveniles accused of misconduct.

>
> 7. My understanding is a tentative prep session of the briefers is planned for some time next week prior to the actual briefing, so defer to Dave Waldron on further guidance on prep session and actual briefing. At this point just need names of respective Judge Advocate briefers from each service who would participate alongside DOD OGC and OSD P&R briefers.
>
> Break// Dave Waldron over to you for further guidance....
>
>
> VR (b) (6)
>
> (b) (6), Jr.
> Acting Deputy, Office of Legislative Counsel Office of the DOD General
> Counsel
> (b) (6)
>
>